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Amendment No. 3 to HB2957

**Dunn
Signature of Sponsor**

AMEND Senate Bill No. 2646*

House Bill No. 2957

by deleting Section 1 and by substituting instead the following:

SECTION 1.

(a) Sections 14(b), 14(c), 20, 21, 22, 23, 24 and 25 of this act shall be known, and may be cited as, the "Sales and Use Tax Temporary Funding Plan."

(b) Sections 2 through 13 and Sections 16 through 19 of this act shall be known, and may be cited as, the "Tennessee Flat Tax Reform Plan."

AND FURTHER AMEND by deleting the amendatory language of Section 7(h) and by substituting instead the following:

(h) Notwithstanding any provision of this chapter to the contrary, no county or incorporated city or town is authorized to levy any tax on the sale of food, exempt from taxation under Section 67-6-385; the sale of clothing, exempt from taxation under Section 67-6-386; or the sale of over-the-counter drugs, exempt from taxation under Section 67-6-387.

AND FURTHER AMEND by deleting from Section 8, 67-6-715(a), the words and punctuation "amendments to title 67, chapter 6, provided in the Tax Reform Act of 2002.", wherever such words and punctuation sequentially appear, and by substituting instead the following:

amendments to title 67, chapter 6, provided in the Tennessee Flat Tax Reform Plan.

AND FURTHER AMEND by deleting from Section 14(b) the words "If the tax levied pursuant to Section 11 of this act is held unconstitutional" and by substituting instead the following:

If the tax levied pursuant to Section 11 of this act or if the Tennessee Flat Tax Reform Plan is held unconstitutional

AND FURTHER AMEND by deleting the following language from Section 14(b)(1):

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Tennessee Code Annotated, Section 67-6-103, is amended by adding the following new subsection:

() Notwithstanding the provisions of this section to the contrary, all revenue generated from the increase in the rate of the state sales and use tax pursuant to the provisions of the Tax Reform Act of 2002 shall be deposited in the state general fund and no funds generated from such rate increase shall be distributed pursuant to the provisions of (a) through (e) of this section.

and by substituting instead the following:

Tennessee Code Annotated, Section 67-6-103, is amended by adding the following language as a new, appropriately designated subsection:

(g) Notwithstanding the provisions of this section to the contrary, all revenue generated from the increase in the rate of the state sales and use tax pursuant to the provisions of the Sales and Use Tax Temporary Funding Plan shall be deposited in the state general fund and no funds generated from such rate increase shall be distributed pursuant to the provisions of (a) through (e) of this section.

AND FURTHER AMEND by adding the following language to Section 14 as a new, appropriately designated subsection:

(c) Notwithstanding any provision of this act to the contrary, if a constitutional convention is called pursuant to Section 26 of this act, then, effective January 1, 2003:

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(1) Tennessee Code Annotated, Section 67-6-202(a), is amended to substitute the following tax rate:

seven and one-half percent (7.5%)

(2) Tennessee Code Annotated, Section 67-6-203(a), is amended by deleting the language "six percent (6%)", and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of §67-6-202".

(3) Tennessee Code Annotated, Section 67-6-204, is amended by deleting the language "six percent (6%)" wherever it appears in subsections (a) and (c), and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of §67-6-202".

(4) Tennessee Code Annotated, Section 67-6-205(a), is amended by deleting the language "six percent (6%)", and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of §67-6-202".

(5) Tennessee Code Annotated, Section 67-6-103(f), is amended by deleting the language "six percent (6%)", and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of §67-6-202".

(6) Tennessee Code Annotated, Section 67-6-103, is amended by adding the following language as a new, appropriately designated subsection:

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(g) Notwithstanding the provisions of this section to the contrary, all revenue generated from the increase in the rate of the state sales and use tax pursuant to the provisions of the Sales and Use Tax Temporary Funding Plan shall be deposited in the state general fund and no funds generated from such rate increase shall be distributed pursuant to the provisions of (a) through (e) of this section.

(7) Further implementation of the Tennessee Flat Tax Reform Plan shall be halted; collection of the flat tax shall not occur; Sections 2 through 13 and Sections 16 through 19 are repealed; the language of Titles 9, 57 and Title 67, to the extent such language is altered by the Tennessee Flat Tax Reform Plan, is revived and restored to its status immediately prior to this enactment, except to the extent that such language may be amended by the Sales and Use Tax Temporary Funding Plan or by subsequent enactment of the general assembly; and the Tennessee code commission is directed to restore such language appropriately.

(8) The Sales and Use Tax Temporary Funding Plan shall remain in effect until January 1, 2006, at which time Sections 14(c)(1) through 14(c)(6) are repealed; the language of Title 67, Chapter 6, to the extent such language is altered by the Sales and Use Tax Temporary Funding Plan, shall be revived and restored to its status immediately prior to this enactment, except to the extent that such language may be amended by subsequent enactment of the general

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assembly; and the Tennessee code commission is directed to restore such language appropriately.

AND FURTHER AMEND by deleting Sections 26 and 27 and by substituting instead the following sections:

SECTION 26.

(a) In order to ascertain the will of the people with respect to whether or not a limited constitutional convention should be called, there shall be submitted to the people of the state at the regular November election to be held on Tuesday, November 5, 2002, under the general election laws of the state in the several counties, the following question, which shall be printed in full on each ballot or voting machine, in words and figures substantially as follows:

"Question: Shall a limited convention be held to alter Article II, Section 28, of the present Constitution of the State of Tennessee, relative to taxation and expenditures, [*If the convention is held, **then** further implementation of the Tennessee Flat Tax Reform Plan will be halted, **and** the existing Sales and Use Tax Temporary Funding Plan will remain effective indefinitely*]?"

_____FOR THE CONVENTION

_____AGAINST THE CONVENTION

Voters will indicate their choice by placing a cross mark (x) opposite one or the other of the above expressions."

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(b) The proper officers in all counties shall immediately after the election make a return to the secretary of state of the number of votes cast in their respective counties "For the Convention" and the number of votes cast "Against the Convention", and after comparison of the returns by the secretary of state and the attorney general and reporter, the governor shall, by proclamation, announce the results.

(c) If the people approve the question and thereby authorize the convention, then delegates shall be elected at the regular August election to be held on Thursday, August 5, 2004, under the general election laws of the state in the several counties. There shall be thirty-three (33) delegates, with one delegate to be elected by the qualified voters of each state senate district from which members are elected to the senate of the Tennessee general assembly.

(d) Any person who is at least twenty-one (21) years of age, a citizen of the United States, and a citizen of Tennessee for three (3) years and a resident of the district for at least one year may become a candidate for delegate to the convention upon filing with the county election commission of the county of residence a nominating petition containing not less than twenty-five (25) names of legally qualified voters of the district. In the case of a candidate from a state senatorial district comprising more than one county, only one qualifying petition need be filed by the candidate, and that in the candidate's home county, with a

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certified copy thereof filed with the election commission of each of the other counties in the state senatorial district.

Notwithstanding any provision of law to the contrary, every person desiring to become a delegate to the convention shall qualify by filing a qualifying petition or petitions by 12:00 o'clock noon, prevailing time, on Wednesday, March 31, 2004. The names of candidates for the delegates to the convention shall be placed on the official ballot alphabetically without reference to political affiliation. Each voter shall cast a ballot for one delegate from the voter's senatorial district. The candidate from each state senatorial district who receives the greatest number of votes shall be the delegate from the senatorial district.

The returns from the various counties shall be certified to the secretary of state and canvassed by the secretary of state, the governor and the attorney general and reporter in the same manner and form as the returns are required to be certified from the election in which the people vote for and against the call of the convention, as provided in subsection (a), and the governor shall, by proclamation, announce the names of those elected as delegates to the convention. Delegates to the convention, elected and certified, shall receive a certificate of election signed by the governor and attested by the secretary of state under the great seal of the state.

(e) The delegates elected to the convention shall assemble in the chamber of the senate at Nashville at 12:00 o'clock noon on Tuesday, September 7, 2004, and organize by electing one of their members as president,

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another as secretary, and by electing such other officers as they consider necessary. If a majority of the delegates are not present on that date, then those present shall adjourn from day to day until a majority appears, when the convention shall be organized. The convention when organized may adopt its own rules of procedure and employ such clerks, stenographers, reporters, sergeants-at-arms, and other assistants as the convention considers necessary and fix the amount of their compensation.

The compensation of the delegates to the convention shall be a per diem allowance and mileage allowance in such amounts as may prevail, during the time the convention meets, for members of the general assembly, which shall be paid by the state in the same manner that members of the general assembly are paid, upon certification by the president and secretary of the convention. In case there shall be a vacancy in the membership of the convention, it shall be filled by election of the legislative body of the county of residence of the delegate whose seat becomes vacant.

(f) It is the duty of the secretary of state to make publication in at least one general circulation newspaper published in each county of the fact that a constitutional convention election is to be held in the state on Tuesday, November 5, 2002. Any county not having a general circulation newspaper shall be considered to have been notified by publication in the newspaper published in counties immediately adjacent thereto. The secretary of state shall also certify to the various election commissioners of the different counties the form for the ballot

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with reference to the constitutional convention election agreeable to the terms of this section and furnish the election commissioners with any other printed information pertaining to the election that is material or necessary. If the people vote in favor of the convention, then it is the duty of the secretary of state to issue a call for the election of delegates to the convention. The election shall be held in the various counties on Thursday, August 5, 2004, and the secretary of state shall certify to the various county election commissioners the form of the ballot to be used in the election of delegates as provided in subsection (d). All ballots used in the 2002 regular November election shall include the above question as to holding the limited constitutional convention, and the ballots used in the 2004 regular August election shall include the names of the candidates for delegates to such convention, if such convention is approved.

(g) The final action of the convention with respect to the alteration of Article II, Section 28 of the Constitution of the State of Tennessee, relative to taxation and expenditures, shall be duly certified by the president and the secretary of the convention and the original certified copy shall be transmitted to the secretary of state.

(h) Any amendment to Article II, Section 28 of the Constitution of the State of Tennessee, relative to taxation and expenditures, adopted by the convention shall be submitted to the voters of the state for ratification or rejection at an election to be held in such manner and on such date after the final adjournment of the convention as may be fixed and determined by the

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convention. The official ballot to be used in any such election shall be arranged so that the voter can vote separately for the ratification or rejection of each and every amendment. Any election so held shall be held under the general election laws of the state. When the election to ratify or reject any amendment to the constitution has been held, the various county election commissioners shall certify the results thereof in each county to the secretary of state, who, together with the governor and attorney general and reporter, shall canvass the returns and the governor shall issue a proclamation showing the results of the election on the ratification or rejection of the amendments. All amendments ratified and approved in the election held for that purpose shall be proclaimed by the governor as a part of the constitution of the state and such proclamation shall be filed in the office of the secretary of state.

(i) All expenses in connection with the holding of any of the elections authorized by this section shall be paid by the commissioner of finance and administration on warrant drawn upon the treasurer upon certification by the secretary of state to the correctness of each account. No compensation shall be paid by the state to the various county election commissioners for their services or for rental space or quarters in the various counties for places for holding any elections herein authorized.

(j) Notwithstanding any provision of law to the contrary:

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(1) Every person acting as a lobbyist at the constitutional convention shall be subject to the provisions of Title 3, Chapter 6, as if the convention constitutes an annual session of the general assembly;

(2) Every person serving as a delegate to, or an employee of, the constitutional convention shall be subject to the provisions of Title 2, Chapter 10, Part 1, as if the convention constitutes an annual session of the general assembly and such person is serving as a member or employee of the general assembly; and

(3) Every person serving as a delegate to, or an employee of, the constitutional convention (as well as such person's immediate family), shall be subject to the provisions of §3-6-108, as if the convention constitutes an annual session of the general assembly and such person is serving as a member or employee of the general assembly.

SECTION 27.

(a) Except as otherwise provided in this act, Sections 9, 10, and 11 of this act shall take effect upon becoming law and shall apply to tax years beginning on or after January 1, 2003, the public welfare requiring it.

(b) Except as otherwise provided in this act, Section 12 of this act shall take effect on January 1, 2003, and shall apply to tax years ending on or after January 1, 2003, the public welfare requiring it.

(c) Except as otherwise provided in this act, Sections 2, 3, 4, 5, 6, 7 and 8 of this act shall take effect January 1, 2003, the public welfare requiring it.

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(d) Section 14 of this act shall take effect upon becoming law, the public welfare requiring it.

(e) Sections 13, 16, 17, 18, and 19 of this act shall take effect on July 1, 2002, the public welfare requiring it.

(f) Sections 20, 21, 22, 23, and 24 of this act shall take effect on July 1, 2002, the public welfare requiring it, and shall be repealed January 1, 2003; and [except as otherwise provided by Section 14(b) or 14(c)], the statutory sections amended by Sections 20, 21, 22, 23, and 24, respectively, shall be revived and restored on January 1, 2003, as such statutory sections existed immediately prior to this enactment, the public welfare requiring it.

(g) All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.